

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
(212) 758-9500 FAX (212) 758-9526

December 9, 2004

**VIA ELECTRONIC FILING**

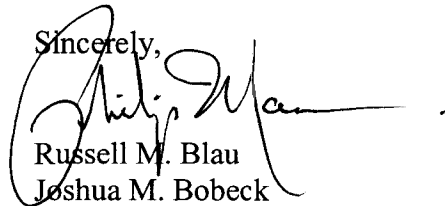
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Portals  
Washington, DC 20554

Re: Ex Parte, WC Docket No. 04-313, CC Docket No. 01-338

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on December 8, 2004, Stephen W. Crawford (Alpheus Communications L.P.), Francisco Maella (Alpheus Communications L.P.), Gavin McCarty (Globalcom, Inc.), Donnie Smith (Jaguar Communications) and the undersigned met with Matthew Brill, Office of Commissioner Abernathy; Christopher Libertelli, Office of Chairman Powell; Commissioner Martin and Daniel Gonzalez; and Commissioner Adelstein and Scott Bergmann. We presented the views set forth in the attached Exhibit A, which was provided at the meetings, and provided the maps set forth in Exhibit B that depict the impact of a 15K and 20K business line threshold test on transport in Houston and Dallas and Fort Worth.

Sincerely,



Russell M. Blau  
Joshua M. Bobeck  
Philip J. Macres

Counsel for

Alpheus Communications, L.P.  
ATX Communications, Inc.  
Freedom Ring Communications, L.L.C. d/b/a BayRing Communications  
CTC Communications Corp.  
Focal Communications Corporation  
Globalcom, Inc.  
Jaguar Communications  
Mpower Communications Corp.  
Ntelos, Inc.  
RCN Telecom Services, Inc.

## Exhibit A

### **DS1 Loops**

- There should be a national and conclusive decision that CLECs are impaired without unbundled access to DS1 loops.
  - Substantial evidence supports such a factual finding
  - DS1 capacity facilities are rarely self-deployed at that capacity level or offered from alternative providers on a wholesale basis
  - *USTA II* does not require a limiting standard because the evidence of impairment does not “vary decisively” across markets
  - CLECs will suffer impairment in all markets without DS1 unbundling
- Wholesale Test
  - 2 or more wholesale alternatives are available from a given loop user location
  - Having 1 wholesaler trigger runs “the risk of failing to accommodate unusual circumstances unique to a single provider that may not reflect the ability of other competitors to similarly deploy.” *TRO*, n. 974, 976.
  - Provision Now Litigate Later—CLECs get DS1 loops pending trigger findings
  - Wholesaler: Common carrier, unaffiliated with the ILEC, own the underlying facilities, and operationally ready offer their DS1 wholesale services
- No self-provisioning trigger should be applied.

### **Transport**

- Proposed Three-Tiered test does not strike a balance that will promote facilities-based competition; overweighted towards potential deployment and has no actual competition component.
- Proposed modifications to Three-Tiered test:
  - Both the collocator and wire center business access line thresholds should be satisfied (AND instead of OR)
  - Thresholds under the Tiers should be adjusted upwards
  - Fiber-based collocators should match on each end of the transport route
  - Keep transport available where either end of the route meets impairment test

### **EEL Criteria Should Not Apply to Stand-Alone UNE Loops**

- Devastating impact on CLECs that use DS-1 loops to provide local data service.
- *Triennial Review Order* – No evidence of need to apply EEL criteria to loops.
- Little record debate on this issue.
- No legal necessity – EEL criteria are unrelated to impairment.
- Solution in search of a problem: IXCs haven’t used UNE loops to avoid special access; use restrictions on EELs address commingling.
- Defer decision - more cautious approach would be to monitor.

### **Transition**

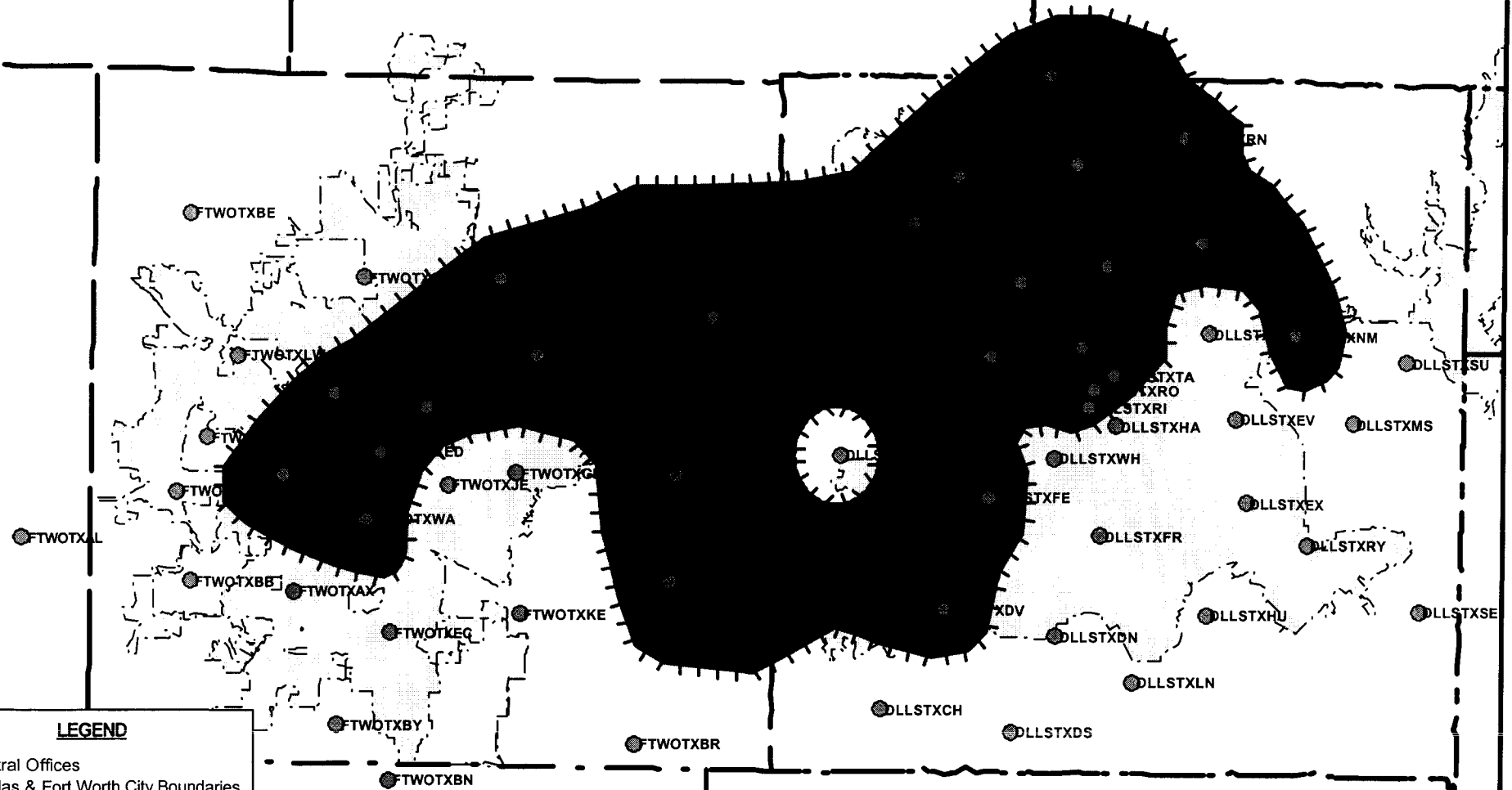
- Transition period for dark fiber must recognize time intensive and physical nature of fiber deployment; 3 years is a reasonable and justifiable transition period.
- TELRIC pricing for cutover to alternative transport provider.
  - Verizon attempting to impose special access NRCs
- For UNE-P, one year minimum from effective date of rules to accommodate collocation and hot cuts.

## **ATTACHMENT B**

## **Exhibit B**

Date: Dec. 6, 2004

## Impact of 15K and 20K Business Line Thresholds Test on Transport in DFW



**LEGEND**

- Central Offices  
Dallas & Fort Worth City Boundaries  
Red equals non impairment finding  
based on Wire Center Business Line  
Density using PNR Associates Data.



ALPHUS

Date: Dec. 6, 2004